

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DANA BOWERS)	
)	
COMPLAINANT)	
V.)	CASE NO. 2010-00447
)	
WINDSTREAM KENTUCKY EAST, LLC)	
D/B/A AT&T KENTUCKY)	
)	
DEFENDANT)	

ORDER

On April 8, 2011, the Commission issued an Order establishing a procedural schedule in the above-captioned case. The Order required, inter alia, the filing of discovery requests by April 29, 2011 with answers to those discovery requests to be filed by May 13, 2011, as well as the filing of direct and rebuttal testimony. On April 21, 2011, Windstream Kentucky East, LLC ("Windstream") filed with the Commission a motion to amend the procedural schedule by extending the filing deadlines in the procedural schedule by two weeks. Ms. Bowers opposed the extension and requested the procedural schedule be shortened in order to accommodate a concurrent action in the United States District Court for the Western District of Kentucky which had established a deadline of September 13, 2011 by which to file dispositive motions. The Commission's decision in this matter will likely affect the nature of those motions.

On May 12, 2011, the Commission issued an Order granting Windstream's motion for an extension of time and at the same time shortened the procedural

schedule. The revised procedural schedule provided an opportunity for the parties to request a hearing and, if no hearing was held, the parties were to file simultaneous briefs, followed by simultaneous rebuttal briefs. On July 1, 2011, Windstream requested that the Commission hold an evidentiary hearing. On July 11, 2011, Ms. Bowers filed a response opposing the motion for a hearing and requesting that the case be addressed by briefs only.

DISCUSSION

Windstream has consistently asserted that there are issues of material fact in dispute in the case before the Commission and that a full procedural schedule, including discovery, the filing of testimony, and a formal public hearing was necessary to provide it due process. Ms. Bowers has consistently asserted that the issues before the Commission are issues solely of law and can be addressed through the filing of briefs. When establishing the procedural schedule in this case, the Commission concluded that there are disputes regarding the material facts and that, because the outcome of this case could involve a significant refund, "the Commission will err on the side of caution in order to protect due process interests."¹

Discovery and the filing of testimony are now complete. A review of the record indicates to the Commission that, after allowing Windstream an opportunity to develop a record, there are no significant material facts in dispute. Windstream's discovery consisted of questions and requests for admission posed to Ms. Bowers. Of the request for admissions posed, Ms. Bowers admitted all but a few of those. The admissions

¹ April 8, 2011 Order at 6.

denied are not material to the issue referred to the Commission by the United States District Court for the Western District of Kentucky.

The material attached to Ms. Bowers' rebuttal "testimony" consists primarily of excerpts from depositions in the Court Action. Windstream asserts that these documents are an attempt by Ms. Bowers to cross-examine Windstream's sole witness and a cross-examination to which Windstream should be able to respond at a hearing. The documents Ms. Bowers submitted appear to be of little probative value to the proceeding before the Commission and do not bear directly on the issues presented before it. Ms. Bowers admits that the only purpose of such filings is to demonstrate Windstream's self-contradictory positions before the District Court and the Commission. The Commission, however, is not concerned with the position that either party takes in any other venue, and will ascribe no weight to the documents attached to Ms. Bowers' rebuttal testimony. Therefore, Windstream need not be provided an opportunity at a hearing to respond.

Based on the foregoing, the Commission finds that only issues of law remain open and that a hearing is not necessary to protect Windstream's due process rights.

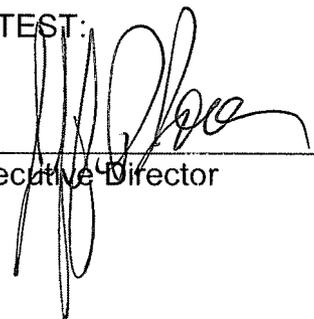
IT IS THEREFORE ORDERED that:

1. Windstream's motion for a hearing is denied.
2. The parties shall simultaneously file briefs no later than ten days from the date of entry of this Order.
3. The parties shall simultaneously file reply briefs within five days of the filing of the initial briefs.

By the Commission

ENTERED ^{pd}
AUG 11 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

2010-00447

D. Randall Gibson
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KENTUCKY 40202-2828

Honorable Mark R Overstreet
Attorney at Law
Stites & Harbison
421 West Main Street
P. O. Box 634
Frankfort, KENTUCKY 40602-0634

Jeanne Shearer
VP - State Government Affairs
Windstream Kentucky East, LLC
130 W New Circle Road, Suite 170
Lexington, KY 40505